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DRAFT

Mr. Louis J. Breimhurst
Executive Director
Minnesota Pollution Control Agency
1935 West County Road B 2
Roseville, MN 55113

Dear Mr. Breimhurst:

I have read your letter of November 23, 1982, to Mrs. Gorsuch and conferred with those Agency employees and Department of Justice attorneys who are working on the civil litigation against Reilly Tar. We do not believe that a \$106 order pursuant to CERCLA is appropriate in this case.

As you know, Reilly has been unwilling to either admit to the endangerment or its contribution to the pollution that has resulted in the closing of several St. Louis Park area wells. In fact, the defenses offered to date by Reilly are perceived to be divertive and delaying in nature. As an example, Reilly's proposal for a comprehensive cleanup is late and there are many indications that it will be in all aspects unacceptable to the MPCA and the federal government. In light of this and the court's denial of Reilly's motion to dismiss, we believe an administrative order will have no effect on Reilly's continuing unwillingness to act voluntarily.

An administrative order at this stage of the litigation offers to Reilly new lines of defense, which could be used to further delay trial. Because of this complication, I believe administrative orders are more appropriate prior to civil litigation.

I believe that our combined case is strong enough that we will prevail at trial, and reimbursement of past and future expenditures should be obtained in judgement. The most urgent remedial actions can proceed while the long range remedial actions should be accomplished by Reilly with a favorable ruling. Consequently, we do not expect that combined federal and state action at this site will affect cleanup of other sites.

I appreciate your concern to quickly resolve this matter. I suggest that we seek as early a trial date as possible.

I understand that our respective staffs together with the Department of Justice have had a good working relationship in preparing for trial. I have every reason to believe that this is the appropriate course should Reilly continue to be uncooperative.

Respectfully yours,

Rita M. Lavelle
Assistant Administrator

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